

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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CARL D. WELLS,

Petitioner,

-v-

SUPT MARK MILLER,

Respondent.
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21-cv-11231 (LJL)
ORDER

LEWIS J. LIMAN, United States District Judge:

Respondent Supt. Mark Miller (“Respondent”) submitted a motion to dismiss the petition for a writ of habeas corpus (“Petition”) of petitioner Carl D. Wells (“Petitioner”) and supporting memoranda of law. *See* Dkt. Nos. 27, 28, 45. In his responsive briefing, Petitioner argues that the delay in his direct appeal should excuse his failure to exhaust the claims raised in the Petition. *See* Dkt. Nos. 49 ¶ 4, 38 ¶¶ 6–8. Neither party has adequately addressed whether Petitioner’s failure to exhaust should be excused under the standard set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), which the Second Circuit has suggested applies to the exhaustion of habeas claims. *See Roberites v. Colly*, 546 F. App’x 17, 19 (2d Cir. 2013).

Both parties are directed to submit supplemental letter briefing, not to exceed three single-spaced pages, by January 27, 2023 that addresses whether Petitioner’s failure to exhaust his habeas claims should be excused. Respondent should also provide an update on the status of Petitioner’s direct appeal and the anticipated timeline for hearing and deciding the appeal.

SO ORDERED.

Dated: January 9, 2023
New York, New York



LEWIS J. LIMAN
United States District Judge